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Verdict

September 18, 2012

Joanna L. Grossman

Single-Sex Public Schools and Classes: A Dangerous Lesson in Stereotypes?



A public middle school in West Virginia was recently ordered to immediately stop its practice of segregating boys and girls into different classes for several subjects. The judge issued a temporary injunction against Van Devender Middle School, based on the strong likelihood that the single-sex programming would be found to violate federal law because the class assignments were mandatory, rather than voluntary.

The American Civil Liberties Union (ACLU) brought the lawsuit, as part of its nationwide investigation into single-sex public-school classes that were green-lighted by a 2006, George W. Bush Administration change in federal education regulations, but seem to operate in ways that are both illegal and damaging to children. In this column, I'll discuss the changes to the law governing single-sex education in public schools, and the **preliminary findings** (http://www.aclu.org/files/assets/doe_ocr_report2_0.pdf) of the ACLU's investigation that make them seem even more questionable.

Title IX and Single-Sex Education

Both public and private schools must comply with the mandates of Title IX of the Education Amendments of 1972, which prohibits schools that receive any federal funding from discriminating on the basis of sex. Single-sex education is controlled not only by the core provision of the statute, which broadly bans sex discrimination, but also by statutory exceptions and administrative regulations. (Single-sex public schools and classes may also violate the Equal Protection Clause of the U.S. Constitution, a possibility I discuss [here](http://writ.news.findlaw.com/grossman/20070207.html) (<http://writ.news.findlaw.com/grossman/20070207.html>).

Under these provisions, private elementary and secondary schools can operate in a single-sex manner without regard to the opportunities that are available to students of the other sex. In contrast, public schools were, under the original regulations, more restricted in their ability to maintain single-sex admissions policies, or to offer single-sex programs within a coeducational school.

Public school districts could operate single-sex elementary and secondary schools only if they made a "comparable" school available to students of the excluded sex. The Office of Civil Rights located in the Department of Education ("OCR") interpreted this regulation to require that the comparable school must also be

a single-sex school. So a school district could operate identical all-male and all-female schools, but could not offer particular programs in one, but not the other, nor could it operate a single-sex school for only one sex.

In addition, districts could offer a school to students of one sex, without offering a comparable school for the other sex, only if the single-sex school was designed to compensate for past discrimination against the sex for whose members the school was created.

Coeducational public schools could not offer single-sex classes, except for those involving participation in contact sports, and those relating to human sexuality. Again, the only exception to this rule was designed to satisfy an affirmative-action rationale: A single-sex class could be offered if it was designed to make up for prior discrimination against students of one sex.

The 2006 Education Regulations: More Room for Single-Sex Public Education

As noted above, at the behest of George W. Bush, the Department of Education adopted new federal regulations in 2006 that were designed to facilitate the establishment of more single-sex educational settings in public school districts.

The number of single-sex public schools has risen from just three to nearly one hundred, and the number of single-sex classes in public schools has skyrocketed from a tiny few to more than 500.

The No Child Left Behind Act of 2001 is known for its emphasis on the use of student testing to measure a school's quality and success. But that Act also contained a little-noticed provision setting aside \$3 million for grants to local educational agencies for "programs to provide same-gender schools and classrooms (consistent with applicable law)."

In retrospect, this budget allocation reflected the Bush Administration's desire and intent to pave the way for more single-sex education in public schools. But in 2001, there was very little that schools could do that would qualify for grant money and be "consistent with applicable law." That law (Title IX, its implementing regulations, and the Fourteenth Amendment of the U.S. Constitution) left little room for permissible single-sex schools and programs in public school districts.

It thus came as no surprise when, shortly after the Act became law, President Bush called upon the Secretary of Education to draft new Title IX regulations that would take a more "flexible" approach to single-sex educational programs.

Thus, OCR issued draft regulations in 2004, which it adopted in final form two-and-a-half years later. The stated purpose for the revised regulations was to provide educational entities "with additional flexibility in providing single-sex classes, extracurricular activities, and schools in elementary and secondary education."

The new regulations depart in several significant ways from the traditional rules. First, the regulations open the door generally to single-sex classes and extracurricular activities. An elementary or secondary school can restrict classes or activities to one sex in order to meet one of two important objectives: (A) "To improve educational achievement of its students, through [an] overall established policy to provide diverse educational opportunities; or (B) To meet the particular, identified educational needs of its students." With respect to either objective, the "single-sex nature" of the program must be "substantially related to achieving that objective."

If they are serving a valid objective, single-sex classes or activities are limited in only three ways: (1) School districts must administer them in an evenhanded manner; (2) student enrollment must be completely voluntary; and (2) all students must be provided with a "substantially equal coeducational class or extracurricular activity."

Two departures from the prior rules are notable: First, recall that the old rule allowed a single-sex format only for classes or activities involving contact sports or sex education, while the new rules allow them in any class or activity.

Second, the regulations now allow a district to provide a single-sex school for members of only one sex, as long

as it provides a substantially equal single-sex or coeducational school for the members of the other sex. A district can thus offer an all-boys' school without an all-girls' school; girls must then attend a co-ed school.

A particularly disturbing feature of the new regulations—particularly in light of the new ACLU findings—is that school districts determine for themselves whether the three-part standard has been satisfied. They are directed to perform self-evaluations to “ensure [single-sex programs] are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex.” OCR explicitly rejected the possibility of subjecting single-sex programs to periodic compliance checks, in favor of schools' self-policing—combined with the rights of parents and students to file administrative complaints, and OCR's “audit” authority.

When these regulations were enacted, they were criticized for throwing open the door to single-sex schools and classes in public school systems, despite little consensus about the need for them, the best ways to design them, or how to guard against the gender stereotypes inherent in intentional gender segregation. Unfortunately, the ACLU's preliminary findings suggest that all of these concerns were warranted—and then some.

“Teach Kids, Not Stereotypes”: The ACLU's Preliminary Findings

As part of a multi-state campaign, the ACLU has undertaken to “assess the growing trend in public education of separating boys and girls based on discredited science and gender stereotypes. . . .” Based on the first twelve months of research into programs in 21 different school districts, the ACLU concludes that “many public school districts misapprehend the [new regulations] relating to single-sex classes and have instituted programs based on sex-stereotyped instruction.”

The ACLU found numerous problems with the classes it studied, notably (1) the failure to comply with the basic requirements of the new regulations, and (2) the clear invocation and perpetuation of gender-based stereotypes. Many of the schools failed to even meet the threshold requirement of having a valid objective for adopting single-sex classes. Several of the schools studied made single-sex classes mandatory, despite the clear requirement under the regulations that any such class be voluntary, or else failed to provide a substantially equal coeducational alternative. For example, the West Virginia Middle School that was just ordered to suspend its single-sex classes failed to abide by the voluntariness requirement. It is hard to understand how so many school districts could fail to follow such a simple rule.

The ACLU also found that several programs had been in operation for more than two years, but had failed to undertake any evaluation or self-assessment, and found that those that did conduct assessments did not comply with the requirement that the district must study the possible perpetuation of stereotypes.

Beyond the failure to comply with basic administrative requirements, the ACLU faults many of the programs it studied for more qualitative problems. First, the report notes, “[v]irtually all” of the programs studied “were premised on the theory that ‘hardwired’ physiological and developmental differences between boys and girls necessitated the use of different teaching methods in sex-separated classrooms.”

This methodology is based in many cases on the highly questionable work of Leonard Sax and Michael Gurian, both of whom have argued that biological differences between boys and girls dictate different educational responses.

For example, as noted in the report, Gurian “has claimed that boys are better than girls in math because their bodies receive daily surges of testosterone, while girls have similar skills only ‘a few days a month’ when they experience ‘increased estrogen during the menstrual cycle.’”

Sax, in turn, has argued that boys and girls hear sounds differently, justifying a recommendation to teachers to speak loudly, clearly and directly to boys (“Open your books. Let's get to work! Mr. Jefferson, that includes you.”), while speaking softly, “using more first names with more terms of endearment and fewer direct commands” when teaching girls (“Emily, darling, would you please sit down for me and join this exercise?”).

Given the schools' reliance on these theories, it is not surprising that the ACLU found “strong evidence” that

“teachers in the single-sex classes incorporated into their teaching stereotyped attitudes about boys’ and girls’ purportedly different interests, talents, and capacities.”

To take just one outrageous example listed in the ACLU report, single-sex classes in one Pennsylvania high school were designed to ensure that “students would experience ‘male-hood and female-hood defined space’ exhibiting characteristics of ‘warrior, protector, and provider’ for boys and giving girls ‘space/time to explore things that young women like [including] writing, applying and doing make-up & hair, art.’”

As the ACLU report notes, much of the science that was trotted out to support such claims has been widely discredited. A recent meta-analysis of single-sex education studies, authored by Diane Halpern and others, criticized the “pseudoscience” of single-sex education, arguing that it “is deeply misguided, and often justified by weak, cherry-picked, or misconstrued scientific claims rather than by valid scientific evidence.” As the ACLU argues in the report, “the behavioral, psychological, and cognitive differences *among* the individual members of any group of girls or any group of boys are much greater, and more relevant from an instructional standpoint, than the differences between boys and girls as groups.”

In addition to pointing out the damage of perpetuating harmful gender stereotypes in the name of discredited science, the ACLU report argues that there is no reason to think that single-sex education in public schools produces better educational outcomes. The report claims that studies supporting such a causal link “have been widely criticized as methodologically flawed on numerous grounds.”

For instance, the Halpern report noted above concluded “[t]here is no well-designed research showing that single-sex education improves students’ academic performance, but there is evidence that sex segregation increases stereotyping and legitimizes institutional sexism.” And while the ACLU report notes that examples can be found of successful single-sex schools, it also notes that there is “no evidence that it is the single-sex structure of these schools that has made them successful.”

The ACLU’s Report Undermines Claims That Single-Sex Education Is Superior

In sum, the ACLU’s preliminary findings about the operation of single-sex classes in public schools are disturbing, although not altogether surprising. As many feared when the Bush Administration suddenly reinterpreted Title IX to allow more single-sex education in public school systems, many of the schools that have taken up the single-sex mantle have done so in a way that is harmful, and lacking in any clear benefit to students.

The evidence compiled by the ACLU more than supports its conclusion that “the Department of Education should act swiftly to rescind the 2006 regulations that have led to a widespread misunderstanding of the requirements of the implementation of single-sex education in public schools, to reinstate the prior regulations, and to provide immediate and much-needed guidance making clear that programs based on sex-stereotyped instruction violate Title IX and the Constitution.”

Let’s hope that President Obama’s OCR acts accordingly.



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